

ASARCO

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PROTECTION AGENCY

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MONTANA OFFICE

Susan Zazzali
RCRA Project Manager
Montana Office
US EPA Region VIII
10 West 15th Street, Suite 3200
Helena, Montana 59626

February 6, 2004

SENT BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

**CONSENT DECREE
CIVIL ACTION NO. CV 98-3-H-CCL
EAST HELENA SITE
WORK PERFORMED IN JANUARY 2004
PROGRESS REPORT #69**

Dear Ms. Zazzali:

On May 5, 1998, Asarco Incorporated (Asarco) and the United States Environmental Protection Agency (EPA) entered into a Consent Decree (Decree) to further the objectives of the Resource Conservation and Recovery Act (RCRA) and the Clean Water Act (CWA). Section XI of the Decree (Reporting: Corrective Action) requires Asarco to submit certified monthly progress reports to EPA which discuss the actions taken by Asarco in achieving compliance with the Decree. The reports are to be submitted to EPA no later than the twentieth (20th) day of the following month. The following describes only those activities that have occurred or are related to projects performed during January 2004. The historical actions taken by Asarco in achieving compliance with the Decree are contained in previous monthly progress reports.

- a. **Describe the actions, progress, and status of projects which have been undertaken pursuant to Part VII of the Decree;**

The Phase I RFI Site Characterization draft Report was submitted to EPA on April 1, 2003. Asarco awaits EPA's response to this document.

On January 13, 2004, Asarco forwarded to the Asarco environmental trustee one Reimbursable Expense Claim Form for work associated with October 2003 RI/FS long-term monitoring at the East Helena site. On January 13, 2004, Asarco forwarded to the Asarco environmental trustee one Contractor Claim Form (Asarco Technical Services Center Laboratory) for work that was performed as part of the RI/FS long-term monitoring at the East Helena site.

On January 26, 2004, Asarco forwarded to the Asarco environmental trustee three Reimbursable Expense Claim Forms for costs associated with sampling supplies under the RI/FS long-term monitoring program at the East Helena site. These three Reimbursable Expense Claim Forms replace similar Contractor Claim Forms (one from Grainger, one from EnviroTech, and one from Eagle Picher) that were previously submitted on December 4, 2003. On January 27, 2004, Asarco forwarded to the Asarco environmental trustee one Reimbursable Expense Claim Form for work associated with groundwater well monitoring at the East Helena site.

A summary of the correspondence transmitted as part of the East Helena Consent Decree in January 2004 is included in Attachment 1.

- b. Identify any requirements under the Part VII of the Decree that were not completed in a timely manner, and problems or anticipated problem areas affecting compliance with the Decree;**

There were no requirements that were not completed in a timely manner nor were there problems or anticipated problem areas that affect compliance with the Decree.

- c. Describe projects completed during the prior month, as well as activities scheduled for the next month;**

In accordance with the March 2000 Groundwater Source Control Interim Measures Design Analysis, Plans, and Specification report, the speiss handling area and the former acid plant sediment drying area are being inspected monthly with the last inspection occurring on January 7, 2004. This monthly inspection documented the condition of the interim measures. The inspection confirmed that all scheduled interim measures were in place.

Phase III Sparge Testing – Asarco completed the operation and monitoring of the sparge systems at the SPAR-1 and SPAR-3 sites in December 2002. The data obtained from this testing will be included as an addendum to the Phase I RFI Site Characterization draft Report.

CAMU Landfill - The construction of the CAMU landfill is complete. The Final Construction Report for the CAMU-Phase 1 Cell was hand-delivered to EPA on January 23, 2002. In accordance with the July 2000 CAMU Design Analysis Report (Operation and Maintenance Plan), the CAMU is being inspected monthly with the last inspection occurring on January 9, 2004. This monthly inspection documented the condition of the CAMU.

RCRA Facility Investigation (RFI) - The Phase I RFI Site Characterization draft Report was submitted to EPA on April 1, 2003.

d. Describes, and estimates the percentage of studies completed;

The original bench-scale testing program for the Phase III air sparge test is 100% complete. The testing has been expanded to include additional column tests. The additional testing is 100% complete. The sparge pilot test program is 100% complete.

The RFI groundwater modeling is 100% complete. The results of this modeling exercise have been included in the Phase I RFI Site Characterization draft Report.

The Interim Measures Work Plan Addendum (May 2002) and responses to EPA's July 1, 2002 comments are 100% complete.

The implementation (field investigations) of the Interim Measures Work Plan Addendum (May 2002, and its revisions) is 100% complete.

e. Describe and summarize all findings to date;

The details of past findings through December 2003 are described and summarized in previous monthly progress reports.

The SPAR-3 system continued to operate through December 17, 2002. Water quality data from December 2002 are pending and will be included as an addendum to the RFI draft Report.

f. Describe actions being taken to address problems;

There were no actions taken to address problems associated with the Decree.

g. Identify changes in key personnel during the period;

Asarco continues to use the services of Asarco Consulting Incorporated and Hydrometrics Incorporated to perform the various activities required under the Consent Decree. The Consent Decree activities will continue to be administrated under the direction of Robert Miller.

h. Include copies of the results of sampling and tests conducted and other data generated pursuant to work performed under Part VII of the Decree since the last Progress Report. Asarco may submit data that has been validated and confirmed by Asarco to supplement any prior submitted data. Updated validated and confirmed data shall be included with the RFI Report, if not delivered before;

No data are attached to this January 2004 monthly progress report.

- i. **Describe the status of financial assurance mechanisms, including whether any changes have occurred, or are expected to occur which might affect them, and the status of efforts to bring such mechanisms back into compliance with the requirements of this Decree.**

ASARCO is still unable, at this time, to make the required financial assurance demonstration using the mechanisms outlined in the East Helena Consent Decree. However, EPA agreed in paragraph 36 of the subsequent national consent decree (U.S. v. ASARCO and Southern Peru Holdings Corp., No. CV 02-2079-PHX-RCB (entered February 3, 2003)) to forego penalties for any noncompliance with financial assurance requirements in RCRA or CERCLA consent decrees (such as the East Helena decree) in calendar years 2003-2005. (Paragraph 35 of the decree also forgoes penalties for past inability to demonstrate financial assurance from December 1997 to the entry of the Decree.) ASARCO continues to try and improve its financial position and hopes to be able to make the required financial assurance demonstration in the future.

CERTIFICATION
PURSUANT TO U.S. v ASARCO INCORPORATED
(CV-98-3-H-CCL, USDC, D. Montana)

I certify under penalty of law that this document, January 2004 Progress Report and all attachments, were prepared under my direct supervision in accordance with a system designed to assure that qualified personnel gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations.

Signature D. E. McAllister
Name: Douglas E. McAllister
Title: Vice President
Date: February 3, 2004

CONSENT DECREE
EAST HELENA SITE
JANUARY 2004 PROGRESS REPORT

SUMMARY OF CORRESPONDENCE
ATTACHMENT 1

DATE OF TRANSMITTAL	CORRESPONDENCE SENT FROM	CORRESPONDENCE SENT TO	SUBJECT	RESPONSE
January 13, 2004	Jon Nickel	Daniel Silver	One Reimbursable Claim Form for RCRA Consent Decree Activities	No Formal Response Required
January 13, 2004	Jon Nickel	Daniel Silver	One Contractor Claim Form for RCRA Consent Decree Activities	No Formal Response Required
January 26, 2004	Jon Nickel	Daniel Silver	Three Reimbursable Expense Claim Forms for RCRA Consent Decree Activities	No Formal Response Required
January 27, 2004	David Aber	Daniel Silver	One Reimbursable Claim Form for RCRA Consent Decree Activities	No Formal Response Required

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